

09-26-00

Patent  
252/123JA  
3/2  
S.Q.  
7/24/00

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Attorney Docket No.: 252/123  
 First Named Inventor: James Hoch, et al.  
 Prior Application Information:  
 Serial No. 09/172,952  
 Examiner: Remy Yucel  
 Art Unit: 1618

BOX PATENT APPLICATION  
 Assistant Commissioner for Patents  
 Washington, D. C. 20231

## FILING UNDER 37 CFR § 1.53(b)

This is a request for filing for a

☐ continuation ☒ divisional ☐ continuation-in-part (CIP)

application under 37 CFR § 1.53(b) of pending prior application Serial No. 09/172,952 filed  
 on October 14, 1998, by

James Hoch et al., entitled:

## METABOLIC SELECTION METHODS

For CONTINUATION or DIVISION APPS only: The entire disclosure of the prior application, from which an oath or declaration is supplied, referenced above, is considered a part of the disclosure of the accompanying continuation or divisional application and is hereby incorporated by reference. The incorporation can only be relied upon when a portion has been inadvertently omitted from the submitted application parts.

## I. APPLICATION ELEMENTS ENCLOSED

89 Page(s) of Written Description ✓  
18 Page(s) of Claims ✓  
1 Page(s) of Abstract ✓  
18 Sheet(s) of Drawings ✓ ☐ formal ☒ informal  
3 Page(s) of ☐ Declaration or ☒ Declaration and Power of Attorney  
☒ Copy from prior application [37 CFR § 1.63(d)]  
☐ Newly executed  
X Other: 34 pgs. sequence listing

CERTIFICATE OF MAILING  
 (37 C.F.R. § 1.10)

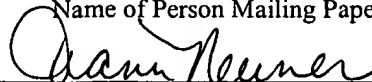
I hereby certify that this paper (along with any referred to as being attached or enclosed) is being deposited with the United States Postal Service on the date shown below with sufficient postage as 'Express Mail Post Office To Addressee' in an envelope addressed to the Assistant Commissioner for Patents, Washington, D.C. 20231.

EL356075039US  
 Express Mail Label No.

April 25, 2000  
 Date of Deposit

Diana Neuner

Name of Person Mailing Paper



Signature of Person Mailing Paper

jc678 U.S. PTO  
 09/557796  
 04/25/00

jc662 U.S. PTO  
 04/25/00

09557796 "04/25/00"

- ☒ Assignment papers (cover sheet and documents(s))
- ☒ An Information Disclosure Statement, PTO 1449, ☐ with copies of cited items.
- ☒ A Verified Statement to establish small entity under 37 CFR §§ 1.9 and 1.27: ☐ Is attached. ☒ Has been filed in the prior application and such status is still proper and desired. [37 CFR § 1.28(a)]

## II. FEE CALCULATION

<b>BASIC FILING FEE:</b>						\$690.00
Total Claims	23	-	20	=	3	x \$18.00 \$54.00
Independent Claims	3	-	3	=	0	x \$78.00 \$0.00
Multiple Dependent Claims	\$260	(if applicable)				<input type="checkbox"/> \$0.00
<b>TOTAL OF ABOVE CALCULATIONS</b>						\$744.00
Reduction by ½ for Filing by Small Entity. Note 37 CFR §§ 1.9, 1.27, 1.28. If applicable, Verified Statement must be attached.						<input type="checkbox"/> \$372.00
Misc. Filing Fees (Recordation of Assignment)						\$0.00
<b>TOTAL FEES DUE HEREWITH</b>						\$372.00

## III. PRIORITY - 35 USC § 119

- ☐ Priority of application Serial No. \_\_\_\_\_ filed on \_\_\_\_\_ in Country is claimed under 35 USC § 119.
- ☐ The certified copy has been filed in prior U.S. application Serial No. \_\_\_\_\_ on \_\_\_\_\_.
- ☐ The certified copy will follow.

## IV. AMENDMENTS

- ☒ Cancel in this application original Claims 1-71, 95-98 of the prior application before calculating the filing fee. (At least one original independent claim must be retained for filing purposes if no new claims are added in a preliminary amendment.)
- ☐ A Preliminary Amendment is enclosed. (Claims added by Amendment must be numbered consecutively beginning with the number next following the highest numbered original claim in the prior application.)

V. **RELATE BACK - 35 USC § 120**

- ☐ Relate back information included in preliminary amendment or specification.  
☒ Please amend the specification as follows:

This application is a division of application serial number 09/172,952, filed October 14, 1998, hereby incorporated by reference herein in totality, including drawings.

- ☐ With respect to the prior co-pending U.S. application from which this application claims benefit under 35 USC § 120, the inventor(s) in this application is (are) [37 CFR 1.53(b)(1)]:
- ☒ the same.
- ☐ less than those named in the prior application and it is requested that the following inventor(s) identified above for the prior application be deleted [see 37 CFR §§1.33(b) AND 1.63(d)(2)]:

[Name(s) of inventor(s) to be deleted]

VI. **FEE PAYMENT BEING MADE AT THIS TIME**

- ☐ Not attached. No filing fee is submitted. [This and the surcharge required by 37 CFR § 1.16(e) can be paid subsequently.]
- ☒ Attached.

- |  |                 |
|--|-----------------|
| <input checked="" type="checkbox"/> Filing fees.   | <u>\$372.00</u> |
| <input type="checkbox"/> Recording assignment. [\$40.00 37 CFR § 1.21(h)(1)]   | -----           |
| <input type="checkbox"/> Petition fee for filing by other than all the inventors or person on behalf of the inventor where inventor refused to sign or cannot be reached. [\$130.00; 37 CFR §§ 1.47 and 1.17(h)] | -----           |
| <input type="checkbox"/> Petition fee to Suspend Prosecution for the Time Necessary to File an Amendment (New Application Filed Concurrently.) [\$130.00; 37 CFR §§ 1.103 and 1.17(i)]                           | -----           |
| <input type="checkbox"/> For processing an application with a specification in a non-English language. [\$130.00; 37 CFR §§ 1.52(d) and 1.17(k)]   | -----           |
| <input type="checkbox"/> Processing and retention fee. [\$130.00; 37 CFR §§ 1.53(f) and 1.21(l)]   | -----           |

**Total Fees Enclosed** \$372.00

VII. **METHOD OF PAYMENT OF FEES**

- ☒ Attached is a check in the amount of \$372.00.
- ☐ Charge Lyon & Lyon's Deposit Account No. **12-2475** in the amount of \_\_\_\_\_.

### VIII. AUTHORIZATION TO CHARGE ADDITIONAL FEES

The Commissioner is hereby authorized to credit Lyon & Lyon's Deposit Account No. 12-2475 for any over payment of fees and to charge the following additional fees by this paper and during the entire pendency of this application to Deposit Account No. 12-2475:

- ☒ 37 CFR § 1.16 (Filing fees and excess claims fees)
- ☒ 37 CFR § 1.17 (Application processing fees)
- ☐ 37 CFR § 1.18 (Issue fee at or before mailing of Notice of Allowance, pursuant to 37 CFR § 1.311(b))
- ☒ 37 CFR § 1.21 (Assignment recordation fees)

### IX. POWER OF ATTORNEY & CORRESPONDENCE ADDRESS

- ☒ The power appears in the original papers in the prior application.
- ☐ The power does not appear in the original papers, but was filed on \_\_\_\_\_ in prior application Serial No. \_\_\_\_\_.
- ☐ A new power has been executed and is attached.

Please send all correspondence to Customer Number 22249:



**22249**

PATENT TRADEMARK OFFICE

LYON & LYON LLP  
Suite 4700  
633 W. Fifth Street  
Los Angeles, CA 90071

Please direct all inquiries to Charles S. Berkman, at (858) 626-2602.

### X. MAINTENANCE OF CO-PENDENCY OF PRIOR APPLICATION

- ☐ A petition, fee and response has been filed to extend the term in the pending **prior** application until \_\_\_\_\_. A copy of the petition for extension of time in the **prior** application is attached.
- ☐ A conditional petition for extension of time is being filed in the pending **prior** application. A copy of the conditional petition for extension of time in the **prior** application is attached.


**XI. ABANDONMENT OF PRIOR APPLICATION**

- ☐ Please abandon the prior application at a time while the prior application is pending or when the petition for extension of time or to revive in that application is granted and when this application is granted a filing date so as to make this application co-pending with said prior application. At the same time, please add the words "now abandoned" to the amendment of the specification set forth in Item V above.

Respectfully submitted,

LYON & LYON LLP

Dated: 4/25/00

By:   
Charles S. Berkman  
Reg. No. 38,077